In re: SAN MARTIN PRODUCE & BROKERAGE, INC.
PACA Docket No. D-99-0006.
Decision and Order filed April 19, 2000.

False representations.

Respondent paid a supplier less money than the amount agreed upon, by check. After the check was negotiated and returned to Respondent by its bank, Respondent's president added the words "Final Payment", to the check in order to support his contention that the supplier accepted the check as full and final payment of the amount owed. In an USDA reparation proceeding, on four separate occasions, Respondent misrepresented in writing that the words "Final Payment", were on the check at the time that the supplier negotiated the check. Judge Bernstein concluded that by this conduct, Respondent violated Section 2(4) of the PACA by making false and misleading statements for a fraudulent purpose.

Eric Paul and Deborah Ben-David, for Complainant.
Robert B. Mitchell, Morgan Hill, California, for Respondent.
Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq*., "the PACA" or "the Act") instituted by a Complaint filed on March 25, 1999, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. Complainant alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) by making, for a fraudulent purpose, four false and misleading statements between March 14, 1995 and February 12, 1996, in connection with a reparation proceeding before the Secretary of Agriculture that concerned a shipment of tomatoes purchased on or about December 14, 1994, in the course of interstate commerce. Respondent submitted an Answer on April 13, 1999, in which it denied violating the act.

A hearing was held before me in San Francisco, California, on September 16, 1999. Complainant was represented by Eric Paul and Deborah Ben-David of the Office of the General Counsel, USDA. Respondent was represented by Robert B. Mitchell. Complainant presented four witnesses and Respondent presented two witnesses. Complainant's Exhibits (CX) 1 through 10 were admitted. Respondent offered no exhibits. The abbreviation" Tr." refers to the hearing transcript. Following the hearing, each party presented proposed findings of fact, proposed conclusions of law and briefs. All proposed findings, proposed conclusions and arguments have been considered. To the extent indicated, they have been adopted. Otherwise they have been rejected as irrelevant or not supported by the evidence.

Findings of Fact

1. Respondent San Martin Produce & Brokerage, Inc., is a corporation organized and existing under the laws of the State of California. Its business address is 1245 Berlin Drive, San Martin, California 95046. Its mailing address is P.O. Box 875, San Martin, California 95046.

2. At all times material, Respondent was licensed under the provisions of the PACA. License #920742 was issued to Respondent on February 25, 1992. This license has been renewed annually.

3. On December 14, 1994, pursuant to oral agreement, a shipment of tomatoes that Respondent had purchased from Bonita Packing Co. Inc., ("Bonita Packing") was shipped from the seller's packing plant to Respondent. (CX-7, p.80; Tr. 53).

4. Respondent agreed to pay $18.00 per box for 480 boxes of extra large "Bonita's Pride" brand tomatoes; $16.00 per box for 1120 boxes of large "Bonita's Pride" brand tomatoes; plus additional charges for palletizing, degreening, and a temperature recorder, for a total f.o.b. invoice price of $27,783.50. (CX-7, p. 81; Tr. 54).

5. This shipment was delivered directly to Respondent's customer, Banner Fruit Co. on or about December 21, 1994. (CX-5).

6. On December 19, 1994, Respondent issued invoice #1106, billing Banner Fruit Co. $19.20 a box for 1120 boxes of large "Bonita's Pride" tomatoes; and $21.20 a box for 480 boxes of extra large "Bonita's Pride" tomatoes; with a total invoice amount of $31,703.50. (CX-5, p. 6).

7. On December 31, 1994, Banner Fruit Co. sent Respondent a letter, along with an account of sales and an adjusted copy of Respondent's invoice #1106, by which Banner Fruit Co. reduced the $19.20 a box price to $12.00 a box; the $21.20 a box price to $14.00 a box; and the total invoice amount from $31,703.50 to $20,138.50. (CX-5, pp. 3-6). The letter contained the following explanation for the reduction:

> Banner Fruit Co. originally entered into a verbal agreement to purchase tomatoes from San Martin Produce - these brand name tomatoes were suppose to be sold exclusively to Banner Fruit Co.. However, this product was being bought and sold in different houses within the market, namely, Golden State, SF Banana Co., and Fresh Produce. Due to this circumstance along with the drop in the market for tomatoes, we were forced to reduce our prices to be able to compete and sell these brand of tomatoes within the market. (CX-5, p. 3).

8. On February 1, 1995, Respondent sent a letter to Bonita Packing along with Respondent's account of the same date showing the $12.00 and $14.00 per carton prices paid by Banner Fruit Co. with further reductions of $2.00 per carton for freight and $0.25 per carton for brokerage. Also enclosed was Respondent's

check #3602 in the amount of $16,583.50. The letter stated:

> The sales were adequate until Timco Co. placed 3 truck loads of "Bonita Pride" label tomatoes to 3 different houses on a "consighn (sic) or price after sale term" which is outside of our verbal agreement for an exclusive on "Bonita Pride" label in the So. San Francisco produce market.
>
> Due to the placement of the 3 loads and the terms of there (sic) sell (sic) Banner Fruit was forced to lower their prices on "Bonita Pride" label tomatoes in order to compete resulting on lower sales.
>
> I believe this will satisfy all parties concerned with this matter. (CX-5, p. 7).

9. Bonita Packing endorsed Respondent's check #3602 "ACCEPTED AS PARTIAL PAYMENT" and deposited the check. (CX-5, p. 9). When received and deposited, this check stated: "FOR 8424".

10. By letter dated February 24, 1995, Bonita Packing submitted a complaint to the PACA Branch in Tucson, Arizona for an award of reparation in the amount of $11,200.00, the difference between the agreed purchase price and the payment received from Respondent. (CX-7, pp. 76-79).

11. Respondent was advised of the pending complaint by letter dated March 1, 1995, which requested Respondent to either remit the $11,200.00 or submit a reply (CX-7, p. 83; Tr. 21).

12. On March 14, 1995, Respondent submitted its reply which read:

> Enclosed is all the pertinent information regarding T-4046 Also, copy of deposited check stating final payment.
>
> Please advise me if there is ant (sic) other information you may require. (CX-7 p.84).

The enclosed copy of check #3602 contained the words "Final Payment" after "FOR 8424." (CX-7, p. 85).

13. On July 13, 1995, J.W. Taylor, Regional Director, Tucson Regional Office, PACA Branch, AMS, sent Respondent a letter giving the agency's informal opinion that Respondent might be held liable in a formal proceeding. (CX-7, p. 94; Tr. 25).

14. On July 14, 1995, Linda Lubkeman of Bonita Packing sent a fax to the PACA Branch in Tucson, Arizona, that stated:

> Per our telephone conversation yesterday, enclosed is a copy of the

check that we received from San Martin Produce & Brokerage Inc. At no time did we ever accept this check as final payment in full. If you need any other information, please call me. . . . (CX-7, p. 88).

The faxed copy of check #3602 did not contain the words "Final Payment" after "FOR 8424." (CX-7, p. 89).

15. Paul Hughes of PACA subsequently contacted each party, seeking better evidence of what words appeared on the check. On August 11, 1995, Respondent sent the original of check #3602 to Mr. Hughes with a letter that read:

Per your request, enclosed is the original San Martin Produce Check # 3602 for final payment on Bonita Packings Invoice # 8424.
Please return check to San Martin Produce when you are finished with your review. (Cx-7, p. 90).

The enclosed original check contained the words, "FOR 8424 Final Payment." (CX-7, p. 91).

16. Also on August 11, 1995, Linda Lubkeman sent Mr. Hughes a copy of check #3602. That copy of the check did not contain the words, "Final Payment". (CX-7, p. 93).

17. On September 22, 1995, a copy of the formal complaint filed by Bonita Packing was served upon Respondent (CX-7, pp. 53-56).

18. In Respondent's sworn answer to the formal complaint dated October 10, 1995, Respondent represented:

8) On or about February 1, 1995 San Martin Produce & Brokerage remitted check #3602 marked "Final Payment" with an accounting of sales from San Martin Produce & Brokerage and Banner Fruit Exhibit #3 in which Bonita Packing deposited. (Cx-5, p. 2).

19. On January 4, 1996, in Bonita Packing's sworn opening statement it stated:

8) These tomatoes were sold at an agreed upon price to San Martin Produce & Brokerage, Inc. We received a check less than the amount agreed upon and did not accept it as "Full Payment" and the check did not have "Full Payment" on it when we received it. Copies of the check that we received were previously submitted to your office in Tucson, Arizona. (CX-7, p. 42, Tr 28, 30).

20. On January 30, 1996, Respondent was given time to submit additional evidence. (CX-7, p. 39).

21. On February 12, 1996, in Respondent's sworn answering statement (CX-6; CX-7, p. 19; Tr 30-31), it stated:

8) Check #3602 was marked "Final Payment" and was deposited.

22. On May 30, 1996, the parties were notified that the reparation file was being referred for assignment and preparation of a decision. (CX-7, p. 8).

23. The Office of the General Counsel referred this matter to the Department's Office of Inspector General ("OIG"). (Tr. 75-76). In the course of OIG's investigation, a statement was prepared for Respondent's president, Rick Argel's signature, which he acknowledged was accurate but declined to sign. (CX-10; Tr. 80-82). A report of OIG's investigation was sent to the United States Attorney in San Francisco. (CX-9; Tr. 83).

24. On November 2, 1998, after the United States Attorney declined to institute a criminal proceeding (Tr. 83), a Decision and Order was issued in the reparation proceeding which concluded that Respondent had failed to prove its affirmative defense of accord and satisfaction and that Respondent was liable to Bonita Packing for the $11,200.00, plus interest and a $300.00 handling fee. (CX-7, pp. 3-7).

25. On November 25, 1998, Respondent paid $15,947.49 to Bonita Packing in satisfaction of this reparation award. (CX-8).

Conclusions of Law and Discussion

Respondent's president, Rick Argel, has admitted entering the words "Final Payment" on Respondent's check #3602 after the check was cashed by Bonita Packing and returned with Respondent's bank statement. (Answer; Tr. 80, p. 125).

On March 14, 1995, after he received notice of Bonita Packing's reparation complaint, Mr. Argel submitted a copy of this altered check to USDA, with a letter stating that he had enclosed the "copy of deposited check stating final payment." (CX-7, p. 84). Respondent misrepresented by this statement.

On August 11, 1995, after Bonita Packing had denied that check #3602 had contained the words "Final Payment" and USDA requested better proof, Rick Argel submitted the original of check #3602 with the "Final Payment" alteration along with a letter stating that ". . . Enclosed is the original San Martin Produce check #3602 for final payment on Bonita Packing's invoice #8424." (CX-7, p. 90). By this August 11, 1995 letter and the enclosed altered original check, Respondent misrepresented for a second time that check #3602, when deposited by Bonita Packing, contained the notation, "Final Payment".

On October 10, 1995, Respondent's sworn answer to the Formal Complaint stated:

8) On or about February 1, 1995 San Martin Produce & Brokerage remitted check #3602 marked "Final Payment" with an accounting of sales from San Martin Produce & Brokerage and Banner Fruit Exhibit #3 in which Bonita Packing deposited. (CX-5, p. 2).

By this answer and the enclosed altered check, Respondent misrepresented for a third time that check #3602 had contained the notation, "Final Payment", when deposited by Bonita Packing.

Finally, on February 12, 1996, Respondent's sworn answering statement stated:

8) Check #3602 was marked "Final Payment" and was deposited. (Cx-6; Cx-7, p. 19).

By this sworn answering statement and the enclosed altered check, Respondent misrepresented for the fourth time that check #3602 had contained the notation, "Final Payment", when received and deposited by Bonita Packing.

Respondent has denied that these misrepresentations were made for a fraudulent purpose. Respondent contends that once the words, "Final Payment" were innocently placed on check #3602, that there was no way to remove them. (Answer).

Respondent's assertions are disingenuous. Bonita Packing deposited Respondent's check with the words "ACCEPTED AS PARTIAL PAYMENT", included in its endorsement. Respondent had no basis to conclude that Bonita Packing had agreed to accept the $16,583.50 as full or final payment for the December 14, 1994 shipment of tomatoes. Although Mr. Argel testified that he entered the words, "Final Payment" on check #3602 to indicate that the matter was closed (Tr. 126-127), he admitted on cross-examination that, in all other instances in his business where a dispute was resolved, his entry would go on other transaction records and not on the check itself. (Tr. 152-153).

Respondent has failed to explain why to its president, Rick Argel, consistently represented in letters and sworn pleadings over an 11 month period that Respondent's check had been received and deposited by Bonita Packing with the words, "Final Payment" on the check, when, in fact, he had entered these words after the paid check had been returned by Respondent's bank. (Tr. 148). Respondent could have acknowledged the truth of Bonita Packing's assertions and explained "innocent" circumstances under which Mr. Argel added the words, "Final Payment". Instead, Respondent continued to make false and misleading statements about the check. In fact, it was not until OIG confronted Mr. Argel in 1998 with proof that check #3602 had not contained the notation, "Final Payment" when deposited, that Mr. Argel admitted that he had made the alteration after the bank had returned the check. (CX-10; Tr. 79-80).

In *The Produce Place*, 53 Agric. Dec. 1715 (1994), *aff'd Produce Place v. U.S.*

Dept. of Agriculture, 91 F.3d 173 (D.C. Cir. 1996), an employee altered the temperatures for berries on inspection certificates. Fraudulent intent was inferred from the way that that respondent used the altered certificates. The innocent intent argument was rejected.

In the present case, even if Mr. Argel may have erroneously believed that check #3602 had been accepted as final payment when he entered these words on the check, his subsequent perpetuation of the falsehood that the words, "Final Payment" had been on the check when it was presented to Bonita Packing, was fraudulent.

Mr. Argel has denied having any knowledge of the defense of accord and satisfaction and intending to raise this defense in the reparation proceeding. (Tr. 130-131). However, I find it unbelievable that a person, with over 20 years of experience in the produce industry, can be ignorant of the significance of adding the words, "Final Payment" on a check, issued in payment for perishable agricultural commodities. Mr. Argel may not have known of the legal defense of accord and satisfaction, but he should have known that adding the words, "Final Payment", on a check, that is accepted and deposited, may limit legal liability.

The record shows that Respondent relied on an affirmative defense of accord and satisfaction throughout the reparation proceeding. When the decision and order was issued in the reparation proceeding, holding that Respondent had asserted, but not proven, the affirmative defense of accord and satisfaction, Respondent elected to pay the reparation award and not seek reconsideration or file an appeal. In fact, Respondent never had a valid defense to the reparation complaint.

Suspension of PACA licenses for periods not to exceed 90 days, under subsection 8(a) of the PACA (7 U.S.C. § 499h(a)), may not be imposed unless the violations are willful or a prior warning letter was sent. This is mandated by section 558(c) of the Administrative Procedure Act (5 U.S.C. § 558(c)), which provides:

> . . . Except in cases of wilfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given--
>
> (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
>
> (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

Respondent was not the subject of any prior investigation, which resulted in the sending of a notice letter respecting violations of the nature alleged in the Complaint. Accordingly, Complainant must establish by a preponderance of the evidence that the false or misleading statements that Respondent made by altering check #3602, and by submitting the altered check with cover letters and sworn pleadings that falsely represented that the words, "Final Payment" were on the

check when it was received and deposited by Bonita Packing, were willful.

Goodman v. Benson, 286 F.2d 896, 900 (7th Cir. 1961), holds that doing an act, which is prohibited and doing it intentionally "irrespective of evil motive or reliance on erroneous advice" or "acts with careless disregard of statutory requirements", is willful; *See also United States v. Illinois Central Railroad Co.*, 303 U.S. 239, 243, 58 S. Ct. 49, 82 L.Ed. 518 (1938). The use of this definition of "willfulness" in cases brought under the PACA has been approved in other circuits. *See, e.g. Potato Sales Co., Inc. v. Dept. of Agriculture*, 92 F.3d 800, 805 (9th Cir. 1996); *Cox v. U.S. Dept. of Agriculture,* 925 F.2d 1102, 1105 (8th Cir. 1991), *cert. denied,* 112 S. Ct. 178 (1991); *American Fruit Purveyors, Inc. v. United States,* 630 F.2d 370, 374 (5th Cir. 1980) (*per curiam*), *cert. denied,* 450 U.S. 997 (1981); In re: *George Steinberg and Son, Inc.*, 32 Agric. Dec. 236 (1973); *aff'd sub nom., George Steinberg and Son, Inc. v. Butz,* 491 F.2d 988 (2d Cir.), *cert. denied,* 419 U.S. 830 (1974).

A more restrictive interpretation of "willful" has been advanced by the United States Courts of Appeals in the Fourth and Tenth Circuits. *Hutto Stockyard, Inc. v. U.S. Dept. of Agriculture,* 903 F.2d 299 (4th Cir. 1990); *Capital Produce Company, Inc. v. United States,* 930 F.2d 1077, 1079 (4th Cir. 1991); *Capital Packing Co. v. United States,* 350 F.2d 67 (10th Cir. 1965). In *Capital Packing* the court interpreted "willfully" to mean "an intentional misdeed or such gross neglect of a known duty as to be the equivalent thereof," 350 F.2d at 78-79. However, in a later case brought under the same act, *Butz v. Glover Livestock Commission Company, Inc.,* 411 U.S. 182, 186-188 (1973), the United States Supreme Court expressly held that registrants may be suspended under the Packers and Stockyards Act (7 U.S.C. § 204) for negligent or careless violations that are not intentional or flagrant, stating:

> The Secretary may suspend "for a reasonable specified period" any registrant who has violated any provision of the Act. 7 U.S.C. § 204. Nothing whatever in that provision confines its application to cases of "intentional and flagrant conduct" or denies its application in cases of negligent or careless violations. Rather, the breadth of the grant of authority to impose the sanction strongly implies a congressional purpose to permit the Secretary to impose it to deter repeated violations of the Act, whether intentional or negligent. *Hyatt v. United States,* 276 F.2d 308, 313 (CA 10 1960); *G. H. Miller & Co. v. United States,* 260 F.2d 286 (CA 7 1958); *In re: Silver,* 21 Agric. Dec. 1438, 1452 (1962). [footnote omitted].

Respondent's violations were intentional misdeeds rather than negligent bookkeeping errors and, therefore, willful under all of the above decisions.

Respondent has claimed that the $16,583.50 paid to Bonita Packing was all this seller was entitled to because it breached the agreement for exclusive sales that

Respondent obtained at the start of the 1994 season. Respondent presented oral testimony on this point. However, Respondent has failed to prove that any such exclusive sales agreement ever existed.

Respondent also raised this breach of contract defense in the reparation proceeding, but failed to support it with any evidence. The decision in that matter stated:

> Respondent has furnished no evidence, other than its bare assertion, that there was any agreement that it should have exclusive distribution rights to Complainant's label in the area to which these tomatoes were shipped. Complainant has denied that there was any such agreement, and we find that Respondent has failed to prove its affirmative defense by a preponderance of the evidence. (CX-7, p. 5).

Respondent produced no documentary evidence at this hearing. Rick Argel testified that he had talked to Billy Don Grant of Bonita Packing at the start of the season and obtained his oral agreement to exclusive sales rights at the South San Francisco market. (Tr. 114-115, 118). However, he admitted that he had nothing in writing to substantiate this contention (Tr. 135), and he failed to produce records of any prior transactions with Bonita Packing. (Tr. 135-136). He testified that he had purchased one or two loads a week during the California season for Florida tomatoes that began in November, 1994. (Tr. 138-139). However, he admitted, on cross-examination and when interviewed by the OIG Special Agent, that purchases of Bonita Packing tomatoes made prior to 1994 were done through a broker. (CX-10; Tr.133).

Bonita Packing's president, Billy Don Grant's testimony completely disputed that of Rick Argel. Mr. Grant testified that he sold tomatoes for growers, whose tomatoes were packed at the Bonita Packing facility in Florida, to buyers in California, in two short seasons each year. (Tr. 42). He believed that he had first sold tomatoes to Respondent either in the spring or fall of 1994. (Tr. 44). He denied knowing where Respondent's customers were located and having agreed to sell exclusively to Respondent in any distribution areas (Tr. 48-49, 172). Mr. Grant, who sold a very large volume of tomatoes, explained that he had given exclusive sales to only two customers in the entire country. (Tr. 49, 173-174). He testified that one of these was located in Los Angeles and that when firms located in the Los Angeles area called he would confirm that the tomatoes were not going to the Los Angeles produce market for resale before making any sales. (Tr. 174). Mr. Grant's testimony was credible. He had no reason to grant any exclusive distribution rights to Respondent at the start of the 1994 season. I found Mr. Grant to be a very believable witness.

Thus, Respondent has failed to prove the existence of any exclusive sales agreement. Respondent has also failed to provide credible evidence that the low

sales prices reported by its customer on resale were caused by the asserted breach rather than by a market decline produced by a general increase in the availability of Florida tomatoes of all labels. (Tr. 69-70, 163, 165-166, 175-176). In any event, Respondent's argument is beside the point. Respondent altered the check after it was negotiated by Bonita Packing and perpetuated the falsehood that the check was presented to Bonita Packing with the "Final Payment" notation on its face. In so doing, Respondent made false or misleading statements for a fraudulent purpose in violation of section 2(4) of the PACA.

As a sanction, Complainant seeks the imposition of a 45-day suspension, or the assessment of an equivalent civil penalty upon Respondent.

90-day suspensions were ordered in the two cases relied upon by Complainant *In re*: *Jacobson Produce, Inc. and George Saer,* 53 Agric. Dec. 728 (1994), and *The Produce Place,* 53 Agric. Dec. 1715 (1994), *aff'd, Produce Place v. U.S. Dept. of Agriculture,* 91 F.3d 173 (D.C. Cir. 1996), *cert. denied,* 516 U.S. 1116, 136 L.Ed. 845, 117 S. Ct. 957 (1997). *In Jacobson,* seven inspection certificates were found to have been fraudulently altered by an agent to falsely represent that the produce purchased on an open or price after sale basis was in worse condition than it really was, and faxed to the seller to justify lower returns. *In Produce Place,* six inspection certificates were found to have been fraudulently altered to show lower temperatures for the strawberries and raspberries inspected. The altered certificates were held to have been sent to the shipper for a fraudulent purpose, that is, to facilitate obtaining price reductions totaling $9,111.00 (53 Agric. Dec. at 1736, 1739-1740). As the serious violations in Produce Place were found to be comparable to those in *Jacobson,* a similar 90-day suspension was ordered. (53 Agric. Dec. at 1763).

False representations made in statements submitted to the Secretary in the course of a reparation proceeding constitute equally serious violations of section 2(4) of the PACA. Because the integrity of the reparation proceeding process is seriously harmed whenever a party makes a false representation to the Secretary, it is appropriate that a sanction be imposed at least equal to that assessed for making false representations to shippers by the altering inspection certificates.

The 45-day suspension sought in the present case also is consistent with the length of suspensions obtained in recent consent decisions. In *In re: James T. Whitlock d/b/a Garden Fresh Produce Company,* PACA Docket No. D-98-0010 (January 6, 1999), a 90-day suspension was agreed to for false representations made for a fraudulent purpose involving seven altered inspection certificates. The suspension was to be held in abeyance and terminated provided Respondent paid a $75,000.00 civil penalty and made restitution to shippers. In *In re: Finest Fruit, Inc.,* PACA Docket No. D-98-0017 (February 10, 1999), a 60-day suspension was agreed to for false representations made for a fraudulent purpose involving four altered inspection certificates, with a provision permitting the payment of a $74,000.00 civil penalty instead of serving the suspension. In *In re: Ram Produce*

Distributors, Inc., PACA Docket No. D-98-0011 (January 21, 1999), a 30-day suspension was agreed to for false representations made for a fraudulent purpose involving nine altered inspection certificates where restitution totaling $9,644.30 had been made to three sellers. In each of these actions resolved by consent decision, a civil penalty amount was agreed to based on an assessment of financial information provided so that the civil penalty would have a deterrent effect commensurate with the suspension that it replaced.

In this case, Complainant's counsel agreed to provide a specific monetary sanction recommendation provided that Respondent provided Complainant with necessary records after the hearing. However, since Respondent has failed to provide Complainant with such information, I conclude that the imposition of a suspension for 45 days is appropriate.

Order

1. Respondent has willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

2. Respondent's license is suspended for 45 days.

3. This decision shall become final without further proceedings 35 days after the date of service of this Decision and Order upon Respondent as provided in section 1.142 of the Rules of Practice (7 C.F.R. § 1.142), unless it is appealed to the Judicial Officer by Respondent within 30 days as provided in section 1.145 of the Rules of Practice (7 C.F.R. §1.145).

[This Decision and Order became final on May 27, 2000.-Editor]